

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HASSAN SABREE, by his mother and
next friend, Hana Sabree;
CATHERINE MEADE, by her father
and next friend, Robert A. Meade;
JOSEPH FRAZIER, by his mother and
next friend, Patricia Frazier,
for themselves and all others
similarly situated,

Plaintiffs,

V.

FEATHER O. HOUSTOUN, in her
official capacity as Secretary of
the Department of Public Welfare
of the Commonwealth of
Pennsylvania,

Defendant.

Civil Action No. 02-CV-3426

Class Action

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION
TO DEFER CONSIDERATION OF PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION PENDING A DECISION ON
DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

Plaintiffs, through their next friends and counsel, submit this Response to Defendant's Motion to Defer Consideration of Plaintiffs' Motion for Class Certification Pending a Decision on Defendant's Motion to Dismiss.

1. Plaintiffs do not oppose deferring consideration of the pending class certification motion until the Court rules on the pending motion to dismiss.

2. Plaintiffs do not concur with Defendant's indication that the propriety of class certification must await review of the ultimate merits of Plaintiffs' claims. Defs.' Mem. at 3. Any class definition presumes that putative class members have been harmed by the defendant's actions; such a presumption does not

require a preliminary determination that such harm has been inflicted. For example, this Court certified a class of persons who "sustained damages" in the sale of stock well before any determination of whether any putative class member sustained any damages. Grossman v. First Pennsylvania Corp., No. 89-9234, 1991 WL 222071 at *7 (E.D. Pa. Oct. 23, 1991) (Hutton, J.) (Att. A). Accordingly, if this Court denies Defendant's Motion to Dismiss the Complaint, it should determine the propriety of class certification before trial on the merits.

Respectfully submitted,

Dated: November 19, 2002

By:

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ORDER

Upon consideration of Defendant's Motion to Defer Consideration of Plaintiffs' Motion for Class Certification Pending a Decision on Defendant's Motion to Dismiss the Complaint and Plaintiffs' Response stating their non-opposition to that Motion, it is hereby ORDERED on this _____ day of _____, 2002 as follows:

1. The Motion is GRANTED.
2. A ruling on Plaintiffs' Motion for Class Certification will be deferred pending a determination on Defendant's Motion to Dismiss. To the extent that the Court denies Defendant's Motion to Dismiss, it will not further defer any ruling on the Motion for Class Certification.

The Honorable Herbert J. Hutton
United States District Judge

CERTIFICATE OF SERVICE

I, Ilene W. Shane, hereby certify that true and correct copies of Plaintiffs' Response to Defendant's Motion to Defer Consideration of Plaintiffs' Motion for Class Certification Pending a Decision on Defendant's Motion to Dismiss the Complaint and proposed Order were served on the following by first class mail, postage prepaid on November 19, 2002:

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